IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16-02-2005

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE S. ASHOK KUMAR

WRIT PETITION NO.24802 OF 2003

S.P. Arjunan,
Advocate .. Petitioner

Vs.

1. The Secretary to Government,
Home (Court 1-A) Department,
Madras 600 009.

2. The Registrar General,
High Court,
Madras - 600 104. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorari as stated therein.

For Petitioners : Mr.V. Bhiman

For Respondents : Mr.S. Gomathinayagam
Special Govt. Pleader

- - -

J U D G M E N T

P.K. MISRA, J

The prayer in this writ petition is for issuing a writ of mandamus directing the State Government, Respondent No.1, to issue order regarding appointment of the petitioner as Civil Judge, a post born in the Subordinate Judicial Services of the State Government.

2. Bereft of unnecessary details, the facts may be noticed in brief:

Petitioner had appeared for the Tamil Nadu State Judicial Service for the post of Civil Judge (Junior Division)/Judicial Magistrate, First Class held during the year 2001-2002. After

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

being selected in the written examination, the petitioner was called for interview and his name was included in the name of successful candidates. As per the normal procedure, a successful candidate before being posted is required to undergo Training and Orientation Programme in the Tamil Nadu State Judicial Academy. The provisional selection was made by Tamil Nadu Public Service Commission on 19.7.2002. As per such communication, it was intimated that the petitioner may await a further communication from the Secretary to the Government in regard to production of certificate of physical fitness and his order of appointment. However, since there was some delay, the petitioner filed W.P.No.38227 of 2002 for a direction to include his name in the two months Training-cum-Orientation Programme. By interim order dated 10.10.2002 in WPMP.No.57473 of 2002, the following order was passed :-

> "... It is reported by the Special Government Pleader that the petitioner's name is likely to be considered after the police verification is over. It is reported that the orientation programme for the newly appointed Civil Judges is already on. Under these circumstances, we direct that the petitioner shall be allowed to join the Orientation Programme which is presently going on however subject to the police inquiry."

Thereafter, the writ petition itself was listed on 13.12.2002 and was disposed of as being infructuous as the training had already been imparted as per the interim order passed by the High Court. Inspite of completion of the training, no further formal order appointing the petitioner was passed. The petitioner filed W.P. No.4191 of 2003 seeking for a direction to issue order of appointment. During pendency of such writ petition, the petitioner made representation dated 11.4.2003 to the Secretary of the Home Department and subsequently, further representation dated 16.6.2003 was made to the State Minister of Law and Justice. In the first of such representation, the petitioner clarified about the controversy surrounding the grant of community certificate and emphasised the fact that the matter had come to rest and the Community Certificate had been issued in accordance with the direction issued by this Court in W.P.No.5302 of 1997. In W.P. No.4191 of 2003, the following order was passed :-

> "2. Mr.P.R.Balasubramanian,learned counsel for the petitioner seeks to withdraw the writ petition as he is of the opinion that something is being done in the matter by the Government. He however seeks the liberty to file a fresh writ petition in case the need arises.
>
> 3. The petition is allowed to be withdrawn with liberty to file a fresh writ petition in case the need arises."

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

3. Thereafter, since the matter has again remained in the doldrums, the present writ petition has been filed with a prayer for issuing writ of mandamus.

4. In the writ petition, the petitioner has referred to the controversy surrounding the grant of Community Certificate and has also referred to the F.I.R registered in connection with Crime No.248 of 1991, on the file of Judicial Magistrate, Rasipuram, under Sections 420 and 468 IPC. He has also referred to the fact that the case has been dropped and subsequently, in a civil suit, the petitioner's caste has been declared as belonging to Kattunayakkan Community and thereafter, this Court, in W.P.No.5302 of 1997, which was disposed of on 21.5.1997, directed the Revenue Divisional Officer to issue Community Certificate, which has been accordingly issued, and therefore, the appointment of the petitioner by the Government on the very same controversy should not be with-held.

5. A counter affidavit has been filed on behalf of the second respondent, namely, the Registrar General of this Court. In such counter affidavit, apart from narrating various developments regarding selection and subsequent training, it has been stated that the Superintendent of Police, Special Branch C.I.D., who was directed to verify the character and antecedents of the petitioner, in his report dated 6.9.2002 stated among other things that the petitioner :

> "... was involved in a case in Tiruchirapalli Vigilance and Anti-Corruption Cr.No.10/88, that the candidate was arrested on 25-05-1988 during the trap, as he has acted as tout for the PEW personnel of Srirangam for getting bribe from the prohibition offenders and that the investigation Officer of the above case conducted search in the house of the candidate and seized his original S.S.L.C. Book which had been forged by changing his community "Ottar" (OC) as "Kattunaickan" (ST). He has however stated that the above case in Vigilance and Anti-Corruption Cr.No.10/88 has been dropped, as it was decided to deal with the Police personnel concerned departmentally and that the candidate has no political leanings. It has been brought to the notice of the Government that a Community Certificate, certifying that Thiru.S.P.Arjunan belongs to Kattunaickan, a Scheduled Tribe Community, has been issued by the Revenue Divisional Officer, Namakkal with reference to the orders of the Hon'ble High Court in W.P.No.5302/97, dated 21-05-1997." (Quoted from the counter)

6. It has been further stated that the Government, by letter dated 26.6.2003 requested this Court's views on the report

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

relating to character and antecedents of the petitioner. Earlier letter of the Government dated 8.4.2003 and the subsequent letter dated 26.6.2003 were placed before the Administrative Committee of this Court and the Administrative Committee has resolved that the name of the petitioner need not be recommended for the post.

7. By way of additional affidavit and additional typed-set, the petitioner has indicated that Cr.No.10/1988 to which reference has been made by the Police was also dropped on the basis of the circumstances stated by the Inspector of Police, Vigilance and Anti-Corruption.

8. Learned counsel for the respondents was directed to produce the relevant file, which has been considered by the Administrative Committee. Though it is not stated in so many words in the minutes of the Administrative Committee, it is obvious that the Administrative Committee recommended for withdrawal of the name on account of the report of the police, particularly relating to the alleged involvement in Cr.No.10 of 1988. The allegation relates to the alleged involvement of the petitioner as a conduit for the PEW personnel of Srirangam for getting bribe from the prohibition offenders.

9. Learned counsel for the petitioner has contended that the alleged incident occurred before 15 years back and even the case itself was dropped. It is of course true that the case was dropped on the basis of the endorsement made by the police to the effect that the police officials wanted to pursue the matter against the errant police officials in a departmental proceeding.

10. Learned counsel for the petitioner has submitted that since the case had been dropped and there is no finding regarding involvement of the petitioner in any manner, merely on the basis of the suspicion, the petitioner could not have been denied the opportunity of employment. He has submitted that mere suspicion cannot take the place of truth and since the case itself has been dropped, it must be taken that there is no involvement.

11. Learned counsel for the petitioner has placed reliance upon several decisions including the decision of the Supreme Court reported in AIR 1999 SC 2326 (COMMISSIONER OF POLICE, DELHI AND ANOTHER v. DHAVAL SINGH). In the aforesaid decision, the respondent before the Supreme Court was a candidate for the post of Constable. In the application form, pertaining to pendency of any criminal case, he had put a cross-mark in the relevant column thus indicating as if no case is pending. He was provisionally selected after passing the written test, physical endurance test and was interviewed, pending verification of his

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

character. Before any order of appointment could be issued in his favour, realising the omission made in the application, he himself written a letter to the Deputy Commissioner of Police on 15.11.1995, wherein he indicated that he inadvertently not mentioned about the pending criminal case in the appropriate column and he had further stated that he had done due to lack of knowledge and that such intimation may be treated as an information from his side. The candidature of the person was cancelled on 20.11.1995 on the ground that he had concealed the material fact in the application form. Subsequently, on 8.12.1995, the trial court acquitted the person of the offences allegedly committed under Sections 147, 342, 327 & 504 IPC. Thereafter, the petitioner made a fresh representation for re-consideration of his case, but such representation was turned down. The Central Administrative Tribunal, however, allowed his application and directed the Commissioner of Police to consider offering appointment to the candidate. Against the said order, the appellant filed appeal before the Supreme Court in April, 1997. On 7.7.1997, the Supreme Court was informed that because of the order of the Tribunal, the respondent had been reinstated in service. The Supreme Court upheld the order of the Tribunal on the ground that the respondent had voluntarily submitted the information about pendency of the criminal case. The respondent, who had inadvertently omitted to mention about the pendency of the criminal case, had voluntarily informed about such case. It was observed as follows :-

> "... It was obligatory on the part of the appellant to have considered that application and apply its mind to the stand of the respondent that he had made an inadvertent mistake before passing the order. That, however, was not done. It is not as if information was given by the respondent regarding the inadvertent mistake committed by him after he had been acquitted by the trial court – it was much before that. It is also obvious that the information was conveyed voluntarily. In vain, have we searched through the order of the Deputy Commissioner of Police and the other record for any observation relating to the information conveyed by the respondent on 15-11-1995 and whether that application could not be treated as curing the defect which had occurred in the Form. We are not told as to how that communication was disposed of either. Did the competent authority ever have a look at it, before passing the order of cancellation of candidature? The cancellation of the candidature under the circumstances was without any proper application of mind and without taking into consideration all relevant material. The Tribunal, therefore, rightly set it aside. We uphold the order of the Tribunal, though for slightly different

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

reasons, as mentioned above."

12. A perusal of the aforesaid decision clearly indicates that the candidature was cancelled on account of a material omission in the Form itself, but the candidate himself had rectified such mistake and yet, the authorities, without considering such representation, cancelled the candidature. Moreover, the alleged offences, of which the person was subsequently acquitted, did not involve any case of moral turpitude.

13. In the present case, the petitioner is seeking appointment to judicial service. It is quite well known that the Judges, like Caesar's wife, must be above suspicion. As already indicated, the refusal to recommend the appointment of the petitioner is obviously on account of the alleged involvement of the petitioner in Cr.No.10/1988, which was a trap case and the alleged role of the petitioner was indeed very undesirable. Such case was not pursued in the criminal Court on the ground that departmental proceedings would be pursued. Even though there is no material to indicate about the result in the departmental proceedings, if any, "the advise of the High Court" and the refusal on the part of the State Government to issue order of appointment keeping in view the character and antecedents, cannot be said to be arbitrary. Law is well settled that even if a person is selected for appointment, such selection does not give absolute right to the candidate selected to seek for writ of mandamus. The appointing authority can refuse to issue order of appointment in respect of the selected candidate for valid reason. Of course, such person cannot be refused appointment on any arbitrary or collateral consideration, but refusal can be on account of valid reason. If the Administrative Committee of this Court, in its advisory capacity, and the State Government, the appointing authority, thought that the petitioner was unsuitable for appointment to a judicial post on account of his alleged involvement in a shady-deal relating to bribery, the State Government cannot be blamed. The discretion of the appointing authority to refuse appointment on some tenable grounds cannot be denied. In the peculiar facts and circumstances of the case, the refusal to issue order of appointment to the petitioner cannot be said to be arbitrary. Even though suspicion may not take the place of proof in a criminal case or evev in departmental proceedings, such a standard cannot be applied while considering the question of appointment, more particularly, when the appointment is for a judicial post.

14. Learned counsel appearing for the respondents has placed reliance upon a decision of the Supreme Court reported in (1996) 11 SCC 605 (DELHI ADMINISTRATION THROUGH ITS CHIEF SECRETARY AND OTHERS v. SUSHIL KUMAR). In our opinion, the facts

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

and circumstances of the case wherein the Supreme Court upheld the refusal of the Government to employ a person even after the acquittal of that person in a criminal case, appears to be particularly applicable to the present case. In the said case, even though the person was selected, it was observed as follows :-

> "... his selection was subject to verification of character and antecedents by the local police. On verification, it was found that his antecedents were such that his appointment to the post of Constable was not found desirable. Accordingly, his name was rejected. Aggrieved by proceedings dated 18-12-1990 culminating in cancellation of his provisional selection, he filed OA in the Central Administrative Tribunal. The Tribunal in the impugned order allowed the application on the ground that since the respondent had been discharged and/or acquitted of the offence punishable under Section 304 IPC, under Section 324 read with Section 34 IPC and under Section 324 IPC, he cannot be denied the right of appointment to the post under the State. The question is whether the view taken by the Tribunal is correct in law? It is seen that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State. Though he was found physically fit, passed the written test and interview and was provisionally selected, on account of his antecedent records, the appointing authority found it not desirable to appoint a person of such record as a Constable to the disciplined force. The view taken by the appointing authority in the background of the case cannot be said to be unwarranted. The Tribunal, therefore, was wholly unjustified in giving the direction for reconsideration of his case. Though he was discharged or acquitted of the criminal offences, the same has nothing to do with the question. What would be relevant is the conduct or character of the candidate to be appointed to a service and not the actual result thereof. If the actual result happened to be in a particular way, the law will take care of the consequences. The consideration relevant to the case if of the antecedents of the candidate. Appointing authority, therefore, has rightly focussed this aspect and found it not desirable to appoint him to the service."

15. In our opinion the facts and circumstances of the said case are very much similar to the facts of the present case and are applicable with more force and vigour, particularly when we are considering the case of appointment to a judicial post.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

16. It is of course true that the said decision was also considered in the Supreme Court decision reported in AIR 1999 SC 2326 (cited supra), but such decision was distinguished. At the cost of repetition, we may indicate that in the latter Supreme Court decision, the question was as to whether there was material suppression in the application form, which omission had been in fact voluntarily supplied by the candidate himself. In the case reported in (1996) 11 SCC 605, the question was regarding suitability and desirability of the person having doubtful antecedents. With respect, we are of the opinion that the earlier Supreme Court's decision reported in (1996) SCC 605 is squarely applicable to the facts of the present case and the latter Supreme Court decision reported in AIR 1999 SC 2326 is distinguishable.

17. Learned counsel for the petitioner has also relied upon a decision of Rajasthan High Court reported in 2000(5) SLR 658 (KHAMA RAM VISHNOI & 7 OTHERS v. STATE OF RAJASTHAN AND ANOTHER). The aforesaid decision pertains related to the question of suppression of material fact in the Form. The facts in the said case are quite similar to the facts in the Supreme Court case reported in AIR 1999 SC 2326. Since we have already held that the ratio of the aforesaid Supreme Court decision is not applicable to the facts and circumstances of the present case, the decision of Rajasthan High Court is equally inapplicable.

18. There is yet another reason to refuse the prayer of the petitioner. The writ petition was filed in September, 2003. The petitioner was aged about 52 years at that stage. Therefore, at present, he would be around 54 years. Keeping in view the age of retirement, he would have hardly 4 to 6 years left. In other words, even if a direction is issued for his appointment, since he will have hardly 4 or 6 years, he would merely be a bird of passage and by the time he acquires sufficient experience to discharge his duty with some amount of competence, he would be reaching the age of superannuation. It would not be appropriate to issue appointment order, particularly in a sensitive post like Judicial Officer to the person who would merely function as bird of passage.

19. Learned counsel for the petitioner has submitted that it was inappropriate on the part of the High Court or the Government to rake up the question relating to community certificate and refuse the appointment, in view of the fact that such matter has already been concluded by the High Court in W.P.No.5302 of 1997, pursuant to which, Community Certificate had already been issued. He has placed reliance upon several decisions of the Supreme Court and of this Court.

20. As already indicated, the refusal to issue order of appointment appears to be on account of the alleged involvement of the petitioner in the trap case relating to bribery, namely

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Cr.No.10/1988 and not on account of the controversy relating to Community Certificate. Therefore, it is unnecessary to deal with this submission.

21. For the aforesaid reasons, we do not find any merit in the present writ petition, which is accordingly dismissed without any order as to costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

dpk

To

1. The Secretary to Government,
   Home (Court 1-A) Department,
   Madras 600 009.

2. The Registrar General,
   High Court,
   Madras - 600 104.

+ 1 CC to Mr.V.Bhiman, Advocate SR NO 7202

+ 1 CC to Govt. Pleader SR NO 7134

WP.No.24802 OF 2003
16-02-2005

ra(co)
gp/28.2.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/